

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-3823**

**May 8, 2003**

**R E S O L U T I O N**

Resolution E-3823. Pacific Gas and Electric (PG&E) submits an Advice Letter (AL) to adjust the Diablo Canyon Units 1 and 2 Nuclear Decommissioning Cost-of-service amounts

PG&E's advice letter requests authority to (1) adjust the Separated Revenue Requirement Amount to be consistent with the IRS Revised Schedule of Ruling Amounts (SRA) for Diablo Canyon Nuclear Power Plant Unit 1 issued April 13, 2001, and unit 2 issued April 20, 2001, and (2) transfer \$10 million that were collected in nuclear decommissioning rates but were not transferred to the nuclear decommissioning trust to the TRA. Approved with modifications.

By Advice Letter 2177-E Filed on November 21, 2001 and AL 2177-E-A filed on December 6, 2001.

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**SUMMARY**

This Resolution approves with modifications PG&E's request for authority to adjust the Separated Revenue Requirement Amount to be consistent with the IRS Revised Schedule of Ruling Amounts (SRA) for Diablo Canyon Nuclear Power Plant Unit 1 issued April 13, 2001, and unit 2 issued April 20, 2001.

In the same advice letter, PG&E requests authority to transfer approximately \$10 million that were collected in nuclear decommissioning rates to the Transition Revenue Account (TRA). This Resolution determines that the \$10 million should be used to offset the nuclear decommissioning revenue requirement set in A.02-03-020.

## **BACKGROUND**

### **IRS ruling led to overcollection of Nuclear Decommissioning funds**

The test year 1999 GRC decision authorized PG&E to collect \$26,450,028 million<sup>1</sup> per year to fund the decommissioning of its Diablo Canyon Nuclear Power plant. The funds collected to pay for the future decommissioning are put into a special tax-deductible account called the Nuclear Decommissioning Master Trust (the Trust). The Internal Revenue Service (IRS) sets the maximum amount allowed to be contributed to the Trust.

Following the final decision in the 1999 GRC, PG&E applied to the IRS to get a ruling on the annual limits to the Trust that could be tax-deductible. The IRS ruled that the tax-deductible amount is \$23,983,078.

The annual difference between the GRC authorized amount for Nuclear Decommissioning, and the IRS limit on tax-deductible contributions is \$2,466,950. From 1999 through 2001, PG&E has been collecting this \$2.5 million per year (along with accrued interest), but not contributing it to the Trust.

### **PG&E Cash Conservation Measures kept some funds earmarked for the Trust from being contributed to the Trust.**

During the power crisis, PG&E engaged in numerous “Cash Conservation” measures in an effort to keep more cash on hand. One of the strategies that PG&E employed to improve its cash position was to stop making payments to the Nuclear Decommissioning Master Trust from August 2000 through December 2000.

Over this period in 2000, PG&E collected \$10 million (the precise amount is \$9,992,949) in rates for nuclear decommissioning contributions that were kept by PG&E, and not transferred to the Trust.

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1. Decision 00-02-046, page 383.

## **NOTICE**

Notice of Advice Letter 2177-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

## **PROTESTS**

PG&E's AL 2177-E was timely protested by the Office of Ratepayer Advocates (ORA).

PG&E responded to ORA's protest on December 18, 2001.

ORA contends that PG&E did not provide sufficient reason to credit the difference between the CPUC-adopted nuclear decommissioning annual expense and the IRS-ruled tax deductible amount to the TRA. ORA recommends that the difference be used to reduce base rates.

The Advice Letter also seeks authority to transfer the \$9,992,949 that was kept as cash on hand but not contributed to the nuclear the Trust to the TRA. ORA contends that the Advice Letter does not provide a reason why the \$10 million should be transferred to the TRA, rather than put towards the Trust. ORA recommends that the \$10 million be applied to the Trust.

## **DISCUSSION**

Energy Division has reviewed AL 2177-E, AL-2177-E-A, and ORA's protest. Discussion of the relevant facts that lead to the approval and modifications of this advice letter is below.

**PG&E's request to reduce the revenue requirement to the limit set by the IRS and transfer the resulting overcollection to the TRA is approved.**

By law, the amounts that can be put into the Trust are limited to the amount that is tax-deductible. <sup>2</sup>

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2. D.00-02-046; Conclusions of Law, Paragraph 40.

Under the rate freeze paradigm, revenues that were left over after paying for authorized expenses were allowed to be applied to the TRA. As the legal limit on the authorized rates for the Trust is the tax-deductible amount set by the IRS, PG&E's request to transfer the overcollection to the TRA is reasonable.

PG&E is authorized to adjust the Separated Revenue Requirement Amount to be consistent with the \$23,983,078 limit set by the IRS Revised Schedule of Ruling Amounts.<sup>3</sup>

**Nuclear Decommissioning funds collected, but not distributed to the Trust because of PG&E's cash conservation measures, shall offset future Nuclear Decommissioning revenue requirements.**

ORA's recommendation to apply the \$10 million to the Trust is not feasible because of the annual limits on tax-deductible contributions to the Trust. PG&E's response to ORA's proposal cites the IRS rules<sup>4</sup> that limit the annual amounts. IRS rules require that contributions to the Fund be made no later than 2 ½ months after the close of the taxable year; PG&E is not eligible to apply the \$10 million to the Trust for taxable year 2000.

The Commission is sympathetic to ORA's objection to transferring the \$10 million to the TRA, as that money was held back from the trust, and was reasonably collected with the intent of paying for nuclear decommissioning activities.

It is not reasonable for the Commission to grant PG&E authority PG&E to transfer the \$10 million it collected for nuclear decommissioning (but not transferred to the Trust) to the TRA, nor is it reasonable to order refunds. It would be burdensome to attempt to equitably allocate the \$10 million to those customers that actually paid rates intended to fund the Trust.

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3. Diablo Canyon Nuclear Power Plant Unit 1 issued April 13, 2001, and unit 2 issued April 20, 2001.

4. PG&E's response to ORA's protest, dated December 18, 2001, cites IRS Code Sections 468A(b), 468A(e)(3), and 468A(g).

In A.02-03-020, the Commission is considering PG&E's Nuclear Decommissioning Revenue Requirement. The \$10 million (plus accrued interest) shall offset the final revenue requirement set in A.02-03-020.

### **COMMENTS**

Public Utilities Code (PU) section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. The draft resolution was mailed to parties for comment pursuant to PU Code section 311(g)(1). Comments were filed by PG&E on April 25, 2003.

PG&E's comments on the draft resolution did not identify any factual, legal, or technical errors. PG&E concurred with the draft resolution's adjustment of the Nuclear Decommissioning Revenue Requirement to be consistent with the IRS SRA and to credit the difference to the TRA. PG&E also agreed that it is reasonable to use the approximately \$10 million collected for nuclear decommissioning (but not transferred to the nuclear decommissioning trusts) as an offset for the final revenue requirement to be set in PG&E's triennial nuclear decommissioning cost proceeding (A.02-03-020).

Nonetheless, PG&E requested altering the treatment of the \$10 million from that proposed in the draft resolution. PG&E suggests that \$6.09 million be used to pay for incremental security costs at the Humboldt Bay's SAFSTOR program that were incurred in 2002, with the remainder used to offset the nuclear decommissioning revenue requirement to be set in A.02-03-020.

After consideration of PG&E's comments, the draft resolution will not be altered. PG&E's recommendations are not compelling for two reasons:

1. PG&E's recommendations for modifications are not based on factual, legal, or technical errors in the draft resolution.
2. PG&E's advice letter notes "... PG&E collected \$9,992,949 through Commission-jurisdictional rates for nuclear decommissioning contributions that were not actually contributed to the trust"<sup>5</sup> and

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5. PG&E AL 2177-E, page 2.

requested that the money be transferred to the TRA. PG&E's advice letter did not raise the issue of the additional SAFSTOR security cost. The most reasonable result is for the \$10 to be contributed to the Trust, as initially authorized by the Commission.

## **FINDINGS**

1. PG&E filed AL 2177-E, supplemented by AL 2177-E-A, requesting Commission authorization to adjust the Diablo Canyon Units 1 and 2 Nuclear Decommissioning Cost-of-service amounts and transfer approximately \$10 million in retained nuclear decommissioning funds to the Transition Revenue Account (TRA).
2. ORA filed a timely protest to AL 2177-E.
3. Section 8325(c) of the Public Utilities Code requires the Commission to limit the collection rates for the decommissioning trust to the amount that is ruled to be tax-deductible. This code section was highlighted in Paragraph 40 of Conclusions of Law in D.00-02-046.
4. The rate freeze paradigm in effect from period from 1999 through 2001 allows PG&E to transfer funds that remain after paying its various revenue requirements to the TRA
5. The cash conservation measures that led to the \$9,992,949 in cash on hand because of undercontributions to the Trust did not constitute an authorized reduction in PG&E's nuclear decommissioning revenue requirement, and therefore, the \$9,992,949 should not be transferred to the TRA.
6. The Commission is currently evaluating PG&E's future nuclear decommissioning revenue requirement in A.02-03-020.
7. ORA's protest is denied.

## **THEREFORE IT IS ORDERED THAT:**

1. PG&E AL 2177-E, supplemented by AL 2177-E-A, requesting Commission authorization to adjust the Diablo Canyon Units 1 and 2 Nuclear Decommissioning Cost-of-service amounts and transfer approximately \$10 million in retained nuclear decommissioning funds to the Transition Revenue Account (TRA) is approved with modifications effective today.

2. PG&E is authorized to adjust the Separated Revenue Requirement Amount to be consistent with the \$23,983,078 limit set by the IRS Revised Schedule of Ruling Amounts (SRA).
3. The overcollections that have resulted from the difference between the Commission-authorized Nuclear Decommissioning Cost-of-Service amounts and the IRS SRA shall be transferred to the TRA.
4. The \$9,992,949 (including any accrued interest) PG&E neglected to contribute to the Trust during its Cash Conservation efforts shall offset the Nuclear Decommissioning revenue requirement determined in A.02-03-020.
5. Within 10 days of today's date, PG&E will supplement 2177-E/-E-A to reflect that (1) the changes in the Nuclear Decommissioning Cost-of-service amounts set in D.00-02-046 have been made, (2) the overcollections authorized to be transferred to the TRA have been transferred, and (3) PG&E has served notice of this Resolution to all parties in A.02-03-020.
6. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 8, 2003; the following Commissioners voting favorably thereon:

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WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners